

FILED

JAN 5 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-76-931 -

ROBERT STOPS AND NORMA STOPS,
Petitioners,

v.

LITTLE HORN STATE BANK,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MONTANA**

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I N D E X

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Treaties and Statutes Involved	2
Statement of the Case	3
Reasons for Granting Writ	5
1. The decision below is in conflict with controlling decisions of this Court	5
2. The decision below overlooks the quasi-sovereign status of the Crow Tribe and destroys tribal self-government	10
3. The decision below creates confusion and contradicts decisions in other jurisdictions	13
a. The decision below creates jurisdictional confusion among Indian tribes and peoples within Montana	13
b. The decision below is inconsistent with prior federal and state court holdings	14
Conclusion	16
Appendix A	1a
Appendix B	1b
Appendix C	1c

CITATIONS

CASES:

	Page
<i>Annis v. Dewey County Bank</i> , 334 F. Supp. 133 (D.S.D. 1971)	8, 14
<i>Arizona ex rel. Merrill v. Turtle</i> , 413 F.2d 683 (9th Cir. 1969)	14, 15
<i>Bad Horse v. Bad Horse</i> , 517 P.2d 893 (Mont. 1974)	6
<i>Benally v. Marcum</i> , 553 P.2d 1270 (N.M. 1976)	14
<i>Big Eagle v. Andrea</i> , 418 F. Supp. 126 (D.S.D. 1976)	12
<i>Blackwolf v. District Court</i> , 493 P.2d 1293 (Mont. 1972)	6
<i>Bryan v. Itasca County</i> , — U.S. —, 96 S.Ct. 2102 (1976)	7
<i>Commissioner v. Brun</i> , 174 N.W.2d 120 (Minn. 1970)	15
<i>County of Beltrami v. County of Hennepin</i> , 264 Minn. 406, 119 N.W.2d 25 (1963)	15
<i>Crow Tribe v. Deernose</i> , 487 P.2d 1133 (Mont. 1971)	4, 6, 7, 11, 14
<i>Dodge v. Nakai</i> , 298 F. Supp. 17 (D. Ariz. 1968)	12
<i>Fisher v. District Court</i> , 424 U.S. 382 (1976)	6, 7, 9, 12, 13
<i>Francisco v. State</i> , No. 12444-PR (Ariz., decided Sept. 28, 1976)	15
<i>Kennerly v. District Court</i> , 400 U.S. 423 (1971)	5, 6, 9, 11, 14, 15
<i>Little Horn State Bank v. Stops</i> , 555 P.2d 211 (Mont. 1976)	1, 9
<i>McClanahan v. Arizona State Tax Comm'n</i> , 411 U.S. 164 (1973)	7, 8, 9, 10, 11
<i>Martin v. Denver Juvenile Court</i> , 493 P.2d 1093 (Colo. 1972)	15
<i>Moe v. Confederated Salish and Kootenai Tribes</i> , 425 U.S. 463 (1976)	10, 11, 13
<i>Morton v. Mancari</i> , 417 U.S. 535 (1974)	7
<i>Nelson v. Dubois</i> , 232 N.W.2d 54 (N.D. 1975)	11
<i>Schantz v. White Lightning</i> , 502 F.2d 67 (8th Cir. 1974)	11

CITATIONS—Continued

	Page
<i>Security State Bank v. Pierre</i> , 511 P.2d 325 (Mont. 1973)	6
<i>State ex rel. Firecrow v. District Court</i> , 536 P.2d 190 (Mont. 1975)	6
<i>State ex rel. Iron Bear v. District Court</i> , 512 P.2d 1292 (Mont. 1973)	6
<i>State ex rel. McDonald v. District Court</i> , 496 P.2d 78 (Mont. 1972)	11
<i>State ex rel. Old Elk v. District Court</i> , 552 P.2d 1394 (Mont. 1976)	14
<i>State Securities, Inc. v. Anderson</i> , 506 P.2d 786 (N.M. 1973)	8
<i>Williams v. Lee</i> , 319 P.2d 998 (Ariz. 1958)	8
<i>Williams v. Lee</i> , 358 U.S. 217 (1959)	8, 9, 12, 14
<i>United States v. Kagama</i> , 118 U.S. 375 (1886)	8
<i>United States v. Mazurie</i> , 419 U.S. 544 (1975)	7, 9
<i>United States v. Quiver</i> , 241 U.S. 602 (1916)	8-9

CONSTITUTIONS

<i>Montana Constitution</i> , 1889, Ordinance I, Sec. 2	11
<i>Montana Constitution</i> , 1972, Article I	11

TREATIES

<i>Treaty with the Crow</i> , 1825, 7 Stat. 266	10
<i>Treaty of Fort Laramie</i> , 1851, 11 Stat. 749	10
<i>Treaty with the Crows</i> , 1868, 15 Stat. 649	10, 13

STATUTES

<i>Agreement with Crows</i> , 1881, 22 Stat. 42	10
<i>Agreement with Crows</i> , 1881, 22 Stat. 157	10
<i>Enabling Act of Montana</i> , 1889, 25 Stat. 767	11
<i>Act of April 27, 1904</i> , 33 Stat. 352	10
<i>Act of June 4, 1920</i> , 41 Stat. 751	10
<i>Act of May 19, 1926</i> , 44 Stat. 566	10
<i>Act of August 15, 1953</i> , 67 Stat. 588	2, 4, 5, 11, 14

CITATIONS—Continued

	Page
Indian Civil Rights Act, 1968, 82 Stat. 78, 25 U.S.C. §§ 1321-1326	4, 6
Indian Reorganization Act, 25 U.S.C. §§ 461 <i>et seq.</i>	9
Indian Self-Determination Act, 25 U.S.C. §§ 450 <i>et seq.</i>	9
Organic Act of the Territory of Montana, 1864, 13 Stat. 85	11
25 U.S.C. § 2	12
25 U.S.C. § 9	12
25 U.S.C. § 462	10
25 U.S.C. § 1302	12
25 U.S.C. § 1311	12
25 U.S.C. § 1322(a)	9, 12
25 U.S.C. § 1326	2, 6, 7, 8
28 U.S.C. § 1257(3)	3
	2

REGULATIONS

25 C.F.R. Pt. 11	9, 12
25 C.F.R. §§ 11.1 <i>et seq.</i>	4
25 C.F.R. § 11.1(e)	12
25 C.F.R. § 11.22C	12
25 C.F.R. § 11.23(c)	12
25 C.F.R. § 11.24C	12

RESOLUTIONS

Resolution 64-2 of the Crow Tribal Council	3, 6, 12
--------------------------------------------	----------

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**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MONTANA**

Robert Stops and Norma Stops petition for a writ of certiorari to review the opinion and judgment of the Supreme Court of the State of Montana.

OPINIONS BELOW

The judgment of the Supreme Court of the State of Montana is reported as *Little Horn State Bank v. Robert Stops and Norma Stops*, 555 P.2d 211 (Mont. 1976), and is reproduced as Appendix A. The Order and Memorandum of the District Court of the Thirteenth Judicial District of the State of Montana in and for the County of Big Horn is unreported and is reproduced as Appendix B.

JURISDICTION

The judgment of the Supreme Court of the State of Montana was entered on October 7, 1976. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the Montana state courts and the sheriff of Big Horn County have jurisdiction to enforce an order of execution within the exterior boundaries of the Crow Indian Reservation on personal property owned and on wages earned by enrolled members of the Crow Tribe who earn their income and reside within the Reservation, when the judgment was rendered off the Reservation.

TREATIES AND STATUTES INVOLVED

Section 7 of the Act of August 15, 1953, 67 Stat. 588, 590:

"The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

25 U.S.C. § 1322(a) (1970):

"The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of juris-

diction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State."

25 U.S.C. § 1326 (1970):

"State jurisdiction acquired pursuant to this sub-chapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults."

Resolution 64-2 of the Crow Tribal Council is reproduced as Appendix C.

STATEMENT OF THE CASE

The facts relevant to the question presented by the petition are uncontested.

On July 15, 1970, the Little Horn State Bank of Hardin, Montana, entered into a loan agreement with Robert and Norma Stops. The amount of the loan was \$3,538.00. The transaction between the Little Horn State Bank and the Stops took place in Hardin, Montana, which is located outside the exterior boundaries of the Crow Indian Reservation. The Stops are enrolled members of the Crow Tribe of Indians and reside within

the exterior boundaries of the Reservation. A dispute arose over non-payment of the loan and repossession by the bank of certain farm machinery, which damaged the Stops in the pursuit of their livelihood as farmers. The bank filed an action in the State District Court in the Thirteenth Judicial District in and for the County of Big Horn and process was served upon the Stops at their home within the confines of the Crow Reservation.

The case proceeded to trial by jury, and on February 23, 1976, a judgment in favor of the bank was entered in the amount of \$3,541.24.

The Crow Tribe of Indians maintains a tribal court of general jurisdiction pursuant to the Code of Federal Regulations. This is commonly known as a Court of Indian Offenses. 25 CFR 11.1 *et seq.* Also, on January 31, 1976, the Crow Tribal Council adopted its own Law and Order Code which presently is being reviewed by the Secretary of the Interior before its formal implementation.

The bank made no attempt to enforce its judgment in tribal court.

Montana has not assumed civil or criminal jurisdiction on the Crow Indian Reservation pursuant to Public Law 280, the Act of August 15, 1953, 67 Stat. 588, as amended by portions of the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1321-22. See *Crow Tribe v. Deernose*, 158 Mont. 25, 487 P.2d 1133 (1971).

On February 23, 1976, a writ of execution was granted by the state district court and the bank proceeded to attach the wages of Robert Stops who is an employee of the United States Park Service at Crow Agency, Montana. The situs of said employment is within the exterior boundaries of the Reservation. On February 27, 1976,

the Stops filed a petition for injunctive relief in the state district court and asked for an order restraining the enforcement of the writ of execution. On the same day, the district court issued a temporary restraining order preventing the execution upon the wages or property of the Stops pending a hearing. On March 24, 1976, the district court issued an order and memorandum decision (App. B) granting a permanent injunction against levying or executing on the wages or property of the Stops within the Crow Indian Reservation.

The bank appealed the decision to the Supreme Court of Montana. That court reversed the district court and dissolved the injunction holding that:

1. A writ of execution from a state court may issue within an Indian reservation as a means of enforcing a valid state court judgment (App. A).
2. State action, in the form of a writ of execution to enforce a judgment arising from a transaction which occurred off-reservation, does not interfere with the Tribe's right to self-government.

Petitioner seeks review of the state decision by petition for writ of certiorari. In the alternative, petitioner prays for summary reversal without briefing on the merits.

REASONS FOR GRANTING THE WRIT

1. The decision below is in conflict with controlling decisions of this Court.

The holding below conflicts squarely with this Court's decision in *Kennerly v. District Court*, 400 U.S. 423 (1971). There this Court, in reversing the Montana Supreme Court, forbade the exercise of state jurisdiction within "Indian country" unless the prescribed procedures of § 7 of the Act of August 15, 1953, 67 Stat.

590 (hereinafter Public Law 280), as amended, 25 U.S.C. §§ 1321-1326, are followed. But once again in the instant case the Supreme Court of Montana has attempted to undercut this clear Congressional mandate and to ignore the strict scheme of Indian jurisdictional requirements.¹

In *Kennerly*, a non-Indian creditor sued an Indian in a Montana state court to collect a debt that arose on the Blackfeet Reservation. The Blackfeet Tribe had attempted to "concurrently" transfer jurisdiction to the state courts in 1967. This Court held that in order for the state to assume such jurisdiction, the state must take the "affirmative legislative action" required by Public Law 280. *Kennerly v. District Court*, 400 U.S. at 427. Montana had not taken that action and, therefore, this Court held the state had no jurisdiction over the suit. Furthermore, after 1968, tribal consent was required to enable a state to assume civil jurisdiction over litigation against Indians on an Indian reservation. 25 U.S.C. § 1322(a); *Kennerly v. District Court*, 400 U.S. at 482-83.

In the instant case neither the state of Montana nor the Crow Tribe has acted to transfer civil jurisdiction.²

¹ For a time the Montana Supreme Court followed the *Kennerly* holding. E.g., *Crow Tribe v. Deernose*, 487 P.2d 1133 (Mont. 1971); *Blackwolf v. District Court*, 493 P.2d 1293 (Mont. 1972); and *Security State Bank v. Pierre*, 511 P.2d 325 (Mont. 1973). The court below then deviated from these cases in *State ex rel. Firecrow v. District Court*, 536 P.2d 190 (Mont. 1975), reversed *per curiam sub nom. Fisher v. District Court*, 424 U.S. 382 (1976). Apparently, *Fisher* has made no impact on the court below, because, seven months later, the decision in this case was rendered.

² In 1964 the Crow Tribal Council passed Ordinance 64-2 (App. C) which evidences a clear intent on the part of the Tribe to deny Montana civil jurisdiction. Therefore, the questions raised in the cases of *State ex rel. Iron Bear v. District Court*, 512 P.2d 1292 (Mont. 1973) and *Bad Horse v. Bad Horse*, 517 P.2d 893 (Mont. 1974) cert. denied, 419 U.S. 847 (1974) are inapposite. See *Fisher v. District Court*, 424 U.S. at 388, fn. 12.

The Montana Supreme Court once before recognized the lack of state jurisdiction with relation to the Crow Tribe. *Crow Tribe v. Deernose*, 487 P.2d 1133, 1135 (Mont. 1971).

The importance of these requirements for assumption of state jurisdiction was underscored by this Court in *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 177-178 (1973), when it held that:

"Finally, it should be noted that Congress has now provided a method whereby States may assume jurisdiction over reservation Indians. Title 25 U.S.C. § 1322(a) grants the consent of the United States to States wishing to assume the criminal and civil jurisdiction over reservation Indians, and 25 U.S.C. § 1324 confers upon the States the right to disregard enabling acts which limit their authority over such Indians. But the Act expressly provides that the State must act 'with the consent of the tribe occupying the particular Indian country,' 25 U.S.C. § 1322(a)"

The above principal, known as pre-emption, is defined commonly as a test to see whether the federal government has authorized a particular state to extend its law and civil jurisdiction into Indian country. It derives from the plenary and exclusive power of the federal government to deal with Indian tribes, *United States v. Mazurie*, 419 U.S. 544 (1975), and *Morton v. Mancari*, 417 U.S. 535 (1974), and to regulate and protect the Indians and their property against unauthorized interference by a state. *Bryan v. Itasca County* — U.S. —, —, 96 S.Ct. 2102, 2105, fn. 2 (1976).

The court below also subverted the clear meaning of this Court's recent decision in *Fisher v. District Court*, 424 U.S. 382 (1976). *Fisher* involved an adoption proceeding that was initiated in a Montana district court. All of the parties involved were members of the Northern

Cheyenne Tribe. Two significant factors guided the Court in *Fisher*. First, the Northern Cheyenne Tribe had been protected consistently by federal treaties and statutes. Secondly, no federal statute sanctioned interference with tribal self-government, Montana never having assumed civil jurisdiction pursuant to Public Law 280.

Both of the factors are applicable to the Crow Reservation. Subject-matter jurisdiction is just one aspect of civil jurisdiction.³ The attachment process is also a significant aspect which by definition necessitates a significant judicial intrusion into Indian country. *McClanahan v. Arizona State Tax Comm'n, supra*. Nowhere does the lower court indicate where a state court obtains the power to execute on personal property within the Crow Reservation. Since the execution process is a law of general application in Montana, the Indian Civil Rights Act, 25 U.S.C. § 1322(a), requires specific, affirmative state and tribal action before that process can apply to Indians on the Crow Reservation.⁴

The decision of the court below also conflicts directly with *Williams v. Lee*, 358 U.S. 217 (1959). The judicial intervention by the state district court infringes on the right of the Crow Indians to govern themselves. This right has been long recognized by this Court. *United States v. Kagama*, 118 U.S. 375 (1886); *United States*

³ It does not follow that because a state court may obtain subject matter jurisdiction that it also obtains the right to attach personal property of Indians within Indian country. See *Annis v. Dewey County Bank*, 335 F. Supp. 133 (D.S.D. 1971). *Contra State Securities, Inc. v. Anderson*, 506 P.2d 786 (N.M. 1973), but see the dissent of Judge Montoya who makes this distinction. *Id.* at 789-793. It is emphasized that although the court below here relied on the latter case as an analogy, nowhere did the majority opinion in *Anderson* discuss the problem of execution. See also *Williams v. Lee*, 319 P.2d 998, 1002-1003 (Ariz. 1958).

* See footnote 2, *supra*.

v. Quiver, 241 U.S. 602 (1916); and *United States v. Mazurie, supra*.

In *Williams v. Lee, supra*, this Court held that a non-tribal-member-creditor could not institute a debt action which arose on the Navajo Reservation against a member-debtor in an Arizona district court. This Court ruled that the tribal court system was the proper forum. 358 U.S. at 222-23. The test to be applied where Indian and state interests come into conflict is:

"Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them." *Id.* at 220.⁵

The Crow Tribe maintains a tribal Court of Indian Offenses. 25 C.F.R. Pt. 11. It has been the recent policy of the federal government to strengthen these tribal procedures through Congressional authorizations and appropriations.⁶ Under these circumstances, as in *Williams v. Lee, supra*, an exercise of state jurisdiction would undermine the authority of the tribal courts over reservation affairs and, hence, would infringe upon the right of the Indians to govern themselves.⁷

⁵ It is submitted that in light of *Kennerly v. District Court, supra*, *McClanahan v. Arizona State Tax Comm'n, supra*, and *Fisher v. District Court, supra*, that this test is probably not applicable to the case at bar. However, it is noted that even under the "infringement test" which, as utilized by the lower court here, 555 P.2d at 213 (App. A, pp. 6a-7a), is completely misconstrued.

⁶ Indian Civil Rights Act, 25 U.S.C. § 1311; Indian Self-Determination Act, 25 U.S.C. § 450 *et seq.*; Indian Reorganization Act, 25 U.S.C. §§ 461 *et seq.*

⁷ See also *Fisher v. District Court, supra*.

2. The decision below overlooks the quasi-sovereign status of the Crow Tribe and destroys tribal self-government.

The Crow Tribe first entered into treaties with the United States in 1825. Treaty with the Crow, 7 Stat. 266. This was followed by the Treaty of Fort Laramie, 1851, 11 Stat. 749. According to the second Treaty of Fort Laramie, 1868, 15 Stat. 649, two important federal recognitions were provided in Article II. First, lands were "set apart for absolute and undisturbed use and occupation of the Indians herein named."⁸ Second, "no persons except herein designated and authorized to do so" were allowed on those lands.⁹ The sanctity of the 1868 Treaty has not been altered by subsequent legislation, and if anything, it has been reinforced.¹⁰

⁸ See *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. at 175; *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976).

⁹ "... and the United States now solemnly agrees that no persons, except those herein designated and authorized so to do, and except such officers, agents, and employees of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians . . ." 15 Stat. at 650.

¹⁰ The following statutes are subsequent legislative treatment as to the Crow Reservation. Two things are most apparent from this legislation. None of it alters the Treaty of 1868 and most of it provides for authorizations to conduct tribal business.

Agreement with the Crows, 1881, 22 Stat. 42 (fourth clause—Treaty of 1868); Agreement with the Crows, 1881, 22 Stat. 157 (refers to Treaty of 1868); Agreement with the Crows, 1890, 26 Stat. 1042 (clause 14—appropriations for tribal council and clause 15—Treaty of 1868); Act of April 27, 1904, 33 Stat. 352 with Amendment (Article VII—all former treaties not inconsistent are still in force, and Act II, clauses 12 and 13—monies reserved for tribal purposes); Act of June 4, 1920, 41 Stat. 751 (Sec. 18—money for expenses of general council); Act of May 19, 1926, 44 Stat. 566 (Sec. 18—money for expenses of general council). The allotment period ceased with the enactment of 25 U.S.C. § 462.

At present the Crow Tribe meets the two recognized tests as recently set forth in *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 476 (1976): that the Crow Tribe has not abandoned its tribal organization and that the treaties and subsequent statutes maintain an existing Indian reservation.

The State of Montana, on the other hand, as a precondition to statehood, placed in its constitution a disclaimer of all right, title, and interest to Indian land.¹¹ It was a provision that essentially paralleled the state's territorial act.¹²

In 1953, pursuant to Public Law 280, the State of Montana was allowed to amend this impediment to its assumption of civil jurisdiction over the Indian reservations in Montana.¹³ In 1972, Montana enacted a new constitution which reaffirmed the previous disclaimer language. Article I, Montana Constitution (1972). As for the Crow Reservation, the Montana Supreme Court in *Crow Tribe v. Deernose*, *supra*, has previously recognized the Crow Reservation as an "existing Indian reservation."

Nevertheless, that court in the instant case has made a *sua sponte* determination that Crow tribal self-government may be cast aside without taking heed of available tribal remedies.¹⁴ Furthermore this determination is blind to

¹¹ The Enabling Act, 1889, 25 Stat. 676, 677, admitted Montana, Washington, North and South Dakota. Section 4 contained the disclaimer provision. See Ordinance No. 1, Section 2 of Montana Constitution (1889).

¹² Organic Act of the Territory of Montana, 1864, 13 Stat. 85.

¹³ *State ex rel. McDonald v. District Court*, 496 P.2d 78 (Mont. 1972).

¹⁴ Although it is the position of petitioner that both federal and tribal remedies are available, the proposition of the lower court that it may exert state judicial intervention where a tribe is specifically not acting has never been of any consequence to this Court. *McClanahan v. Arizona State Tax Comm'n*, *supra*, and *Kennerly v. District Court*, *supra*. The proposition has been re-

the long standing Federal Indian policy of fostering the development of viable tribal judicial systems on reservations such as Crow.¹⁵ Pursuant to 25 U.S.C. §§ 2 and 9, the Secretary of the Interior has promulgated rules and regulations that govern the procedures of a Court of Indian Offenses. 25 C.F.R. Pt. 11.¹⁶ The staffing and operation of such a court is left to the Tribe. The Tribe does have the option, with the approval of the Secretary, to promulgate its own ordinances. 25 C.F.R. § 11.1(e).¹⁷ The Crows have enacted their own jurisdictional statute that complements 25 C.F.R. § 11.22C.¹⁸ The laws applicable to civil actions are found at 25 C.F.R. § 11.23(c). When federal or tribal laws or customs are not applicable, the substantive laws shall be decided by the tribal court "according to the laws of the State in which the matter in dispute may lie." 25 C.F.R. § 11.24C covers the enforcement of judgments in civil actions.

The Little Horn State Bank has not pursued its available tribal remedies to enforce the judgment obtained in the state district court.¹⁹ Execution of the state judgment within the Reservation by the state sheriff would be

jected by other jurisdictions. See *Schantz v. White Lightning*, 502 F.2d 67, 69-70 (8th Cir. 1974), and *Nelson v. Dubois*, 232 N.W.2d 54, 57-58 (N.D. 1975).

¹⁵ See *Williams v. Lee*, *supra*; *Fisher v. District Court*, *supra*; and Indian Civil Rights Act, 25 U.S.C. § 1311.

¹⁶ The regulations, as promulgated by the Secretary of the Interior, are governed by the Indian Civil Rights Act, 25 U.S.C. § 1302. *Big Eagle v. Andrea*, 418 F. Supp. 126 (D.S.D. 1976). Non-Indians who appear in tribal courts are afforded the same protections as Indians. See *Dodge v. Nakai*, 298 F. Supp. 17 (D. Ariz. 1968).

¹⁷ There is presently pending for approval before the Secretary of the Interior a Law and Order Code promulgated by the Crow Tribe.

¹⁸ Resolution 64-2 of the Crow Tribe (App. C).

¹⁹ The determination by the lower court that the tribal court need not afford the state court judgment "full, faith and credit" is simply premature. If it is assumed this is of significance, the tribal court has never had the opportunity to pass on the question.

disregarding those judicial, protective procedures that are afforded enrolled members and their real and personal property as long as both are within the Reservation boundaries. Furthermore, the state sheriff would be clothed with jurisdictional authority which neither the federal government nor the Crow Tribe has ever contemplated.²⁰

3. The decision below creates confusion and contradicts decisions in other jurisdictions.

a. The decision below creates jurisdictional confusion among Indian tribes and peoples within Montana.

Although *Fisher v. District Court*, *supra*, was a *per curiam* decision by this Court, it was anticipated by Indian peoples and tribes that that decision would give some guidance to the State of Montana in its persistent attempts to judicially intervene in tribal affairs.²¹ There are in Montana 27,000 Indian people living on seven viable and distinct federally recognized Indian reservations: Flathead—Confederated Salish and Kootenai Tribes; Fort Peck—Assinniboin Sioux; Fort Belknap—Gros Ventre; Rocky Boy—Chippewa Cree; Blackfeet; Northern Cheyenne and Crow. Each possesses a tribal court system and system of law and order. The State of Montana has never affirmatively enacted any legislation in order to assume responsibilities on those reservations or to spread its laws of general applicability to those reservations. The tribes on the reservations have never contemplated state jurisdictional intrusions, except the Flathead.²²

²⁰ See Articles I & II, Treaty with the Crows, 1868, 15 Stat. 649.

²¹ The petitioner is also not unmindful of the recent case of *Moe v. Confederated Salish and Kootenai Tribe*, *supra*, which also outlined a restraint on the State of Montana in its efforts to tax the personal property of Indians within the Flathead Reservation.

²² See, fn. 13, *supra*.

b. The decision below is inconsistent with prior federal and state court holdings.

The court below is in conflict with at least two federal courts. In *Annis v. Dewey County Bank*, 335 F. Supp. 133 (D.S.D. 1971), the court granted an injunction against a sheriff who attempted to attach cattle within the Cheyenne River Reservation. The loan for the cattle was made off the reservation. The judgment for the debt was rendered by the state court off the reservation. The *Annis* court outlined the problems with South Dakota's disclaimer statute²³ and that state's lack of affirmative action under Public Law 280. The court, relying on *Kennerly v. District Court*, *supra*, held that neither South Dakota nor the Tribe had complied with Congressional procedures in order to obtain jurisdiction.²⁴ Specifically, the *Annis* court stated:

"The actual attachment by state officials must be made on the reservation and state officials have no jurisdiction on Indian reservations either to serve process on an enrolled Indian or to enforce a state court judgment." 335 F. Supp. at 135-136.

Likewise, in *Arizona ex rel. Merrill v. Turtle*, 413 F.2d 683 (9th Cir. 1969), it was held that the State of Arizona had no authority to exercise extradition jurisdiction over Indian residents of the Navajo Reservation in Arizona.²⁵ Relying on *Williams v. Lee*, *supra*, the court held

²³ Identical to Montana's. See fn. 11, *supra*.

²⁴ The *Annis* court specifically quoted from *Crow Tribe v. Deer-nose*, *supra*, that "absent specific Congressional authorization coupled with strict compliance with its terms, state courts acquire no jurisdiction they assert." 335 F. Supp. at 135.

²⁵ The lower court here recently defied the instruction of *Turtle* in *State ex rel. Old Elk v. District Court*, 552 P.2d 1394 (Mont. 1976). *Old Elk* involved the validity of an arrest on the Crow Reservation. The court below ignored the treaties of the Crow Reservation and, more importantly, the viable procedure to apprehend wrong-doers. 25 C.F.R. § 11.2(b). The New Mexico Supreme Court also disagrees with *Old Elk*. *Bennally v. Marcum*, 553 P.2d 1270 (N.M. 1976).

that Arizona's purported right was subservient to "the right of reservation Indians to make their own laws and be ruled by them." 413 F.2d at 685.

The lower court decision also is inconsistent with numerous other state jurisdictions. In *Commissioner v. Brun*, 174 N.W.2d 120 (Minn. 1970), after holding that the State of Minnesota's personal property tax was a debt, the court held that the inability of the State of Minnesota to execute within the Red Lake Reservation defeats an extension of that state's taxing power. *Id.* at 126.

Recently, the Supreme Court of Arizona has held that a county sheriff clothed with the powers of the state cannot serve process within the Papago Reservation. *Francisco v. State*, No. 12444-PR (decided Sept. 28, 1976). The court there specifically relied on the creation and existence of the Papago Reservation, the scheme of disclaimer of state jurisdiction in Indian country by Arizona, and the instructions of *Kennerly v. District Court*, *supra*.²⁶

²⁶ See also *Martin v. Denver Juvenile Court*, 493 P.2d 1093 (Colo. 1972), and *County of Beltrami v. County of Hennepin*, 264 Minn. 406, 119 N.W.2d 25 (1963).

CONCLUSION

For the reasons stated the petitioner respectfully submits that this petition for a writ of certiorari be granted, or, in the alternative, that the decision below be summarily reversed.

Respectfully submitted,

THOMAS J. LYNAUGH
THOMAS K. SCHOPPERT
CATE, LYNAUGH, FITZGERALD & HUSS
Suite 500, Midland National
Bank Building
303 North Broadway
Billings, Montana 59101

Counsel for Petitioners

January 1977.

APPENDICES

APPENDIX A

No. 13338

**IN THE SUPREME COURT OF THE
STATE OF MONTANA
1976**

**LITTLE HORN STATE BANK,
*Plaintiff and Respondent,***

—vs—

**ROBERT STOPS AND NORMA STOPS,
*Defendants and Respondents.***

Appeal from: District Court of the Thirteenth Judicial District, Honorable Charles Luedke, Judge presiding.

Counsel of Record:

For Appellants:

Clarence T. Belue argued, Hardin, Montana

For Respondent:

Cate, Lynaugh, Fitzgerald and Huss, Billings, Montana

Thomas J. Lynaugh argued, Billings, Montana

Submitted: September 9, 1976
Decided: Oct. 7, 1976

Filed: Oct. 7, 1976

/s/ Thomas J. Kearney
Clerk

Mr. Chief Justice James T. Harrison delivered the Opinion of the Court.

This is an appeal from an order entering a permanent injunction against levying or executing upon the property of respondents within the Crow Indian Reservation. The injunction was ordered in the district court of Big Horn County.

This appeal adds another chapter to the never ending story of Indian jurisdiction. The relevant facts are as follows:

Respondents, members of the Crow Indian Tribe residing on the Crow Indian Reservation, obtained a loan from appellant bank located in Hardin, Montana, and failed to repay the loan. This commercial transaction took place at the bank *which is located outside the exterior boundaries of the Crow Indian Reservation*. Process was served upon respondents on the reservation. Thereafter appellant obtained a judgment in the district court of the thirteenth judicial district in the amount of \$3,541.24. Following this judgment on February 18, 1976, execution was issued by the district court on February 23, 1976. The writ of execution was directed to the sheriff of Big Horn County, who proceeded to garnish the wages of respondents earned on the reservation but within Big Horn County. Respondents sought and obtained injunctive relief against the writ of execution. Appellant seeks to dissolve the permanent injunction and be allowed to levy upon the respondents' property and wages within the reservation.

Respondents did not attack the district court's subject matter jurisdiction or personal jurisdiction at the district court level or before this Court. Both of these issues have been laid to rest by *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L Ed 2d 114, 119, and *Bad Horse v. Bad Horse*, 163 Mont. 445, 517 P.2d

893, cert. den. 419 U.S. 847, 95 S.Ct. 83, 42 L Ed 2d 76.

A review of the district court's jurisdiction had no Indian jurisdictional dispute been involved, is useful to this decision. It has been a long standing doctrine that any court having jurisdiction to render a judgment also has the power to enforce that judgment through any order or writ necessary to carry its judgment into effect. *U.S. ex rel. Riggs v. Johnson County*, 6 Wall. 166, 18 L.Ed 768 (1868); *Pam-to-Pee v. United States*, 187 U.S. 371, 23 S.Ct. 142, 47 L.Ed 221 (1902); *Hamilton v. Nakai*, 453 F.2d 152, cert. den. 406 U.S. 945, 92 S.Ct. 2044, 32 L Ed 2d 332.

The United States Supreme Court defined "jurisdiction" at p. 773 in *Riggs*:

"* * * Jurisdiction is defined to be the power to hear and determine the subject matter in controversy in the suit before the court, and *the rule is universal, that if the power is conferred to render the judgment or enter the decree, it also includes the power to issue proper process to enforce such judgment or decree*. * * *

"Express determination of this court is that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment shall be satisfied. * * *" (Emphasis added.)

The Montana legislature enacted section 93-1106, R.C.M. 1947, which contains language analogous to this principle. We have interpreted section 93-1106 to confer upon a court, having proper jurisdiction, all the means necessary to carry the same into effect, and if the court has the power to make an order, it has jurisdiction to enforce that order. *State ex rel. Eisenhauer v. District Court*; 54 Mont. 172, 168 P. 522.

The district court initially sought to enforce its judgment by a writ of execution pursuant to section 93-5801 et seq., R.C.M. 1947. A writ of execution against property of a judgment debtor may be issued by the district court to the sheriff of any county in the state. Section 93-5809, R.C.M. 1947. Thus, a district court has statewide enforcement power under that section. However, the writ must issue to the proper sheriff, since a sheriff has no authority to serve the writ outside of his county. *Merchants Credit Service v. Choteau Co. Bank*, 112 Mont. 229, 114 P.2d 1074.

Absent the existence of the Crow Indian Reservation, there is no question that this writ of execution would be a valid means of enforcing the judgment of the district court. The property subject to the writ was located within Big Horn County, the writ was directed to the sheriff of Big Horn County, and all other essential elements of a valid writ of execution existed.

Respondents urge us to hold that a court having jurisdiction to render a judgment does not have the power to enforce that judgment because the property subject to such writ is located on the Crow Indian Reservation. In effect, they ask that the reservation be treated on an even par with our sister states. Such a situation would not be feasible, since the Crow Tribe does not provide for the honoring of state court judgments, nor is the full-faith and credit clause applicable to the tribe. Had the judgment debtor's property been located in a sister state, appellant bank could have obtained a judgment in that state by pleading the Montana judgment and showing the jurisdictional requirements. Such a conclusion is not available in our situation.

The task to be performed by this Court is to determine whether or not the State action taken in this case is acceptable under the doctrines concerning state jurisdiction over Indian reservations.

The United States Supreme Court has applied different rationale from time to time, and the recent court decisions must be read as a whole to arrive at the proper test to be applied in this case. The initial test was propounded in *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L Ed 2d 254, which stated:

“* * * Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.”

This test was apparently overruled by *Kennerly v. District Court of Montana*, 440 U.S. 423, 91 S.Ct. 480, 27 L Ed 2d 507. However, in *McClanahan v. Arizona Tax Commission*, 411 U.S. 164, 93 S.Ct. 1257, 36 L Ed 2d 129, 140, 141, the Court revived the *Williams* test stating:

“* * * It must be remembered that cases applying the *Williams* test have dealt principally with situations involving non-Indians. [Citations omitted.] In these situations, both the tribe and the State could fairly claim an interest in asserting their respective jurisdictions. The *Williams* test was designed to resolve this conflict by providing that the State could protect its interest up to the point where tribal self-government would be affected.

“* * *

“* * * This Court has therefore held that ‘the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.’”

The Court still adheres to the *Williams* test as evidenced by the recent decision of *Fisher v. District Court of Montana*, 44 U.S.L.W. 3940 (U.S. March 1, 1976), when the court applied the *Williams* test, even though all parties were members of the Northern Cheyenne Tribe, and the litigation arose on the reservation.

The *Williams* test is appropriate to review this appeal. The litigation involves a member of the Crow Tribe residing on the Crow Indian reservation and a nonmember, located off the reservation. It is important to note that the transaction in dispute arose off the reservation. Therefore, we must determine whether state action, in the form of a writ of execution to enforce a judgment rendered on a transaction arising outside the reservation, interferes with the tribe's right to make its own rules and be governed by them.

We hold that it does not.

The cases holding that such interference has occurred present a combination of the transaction occurring on the reservation and the tribal court providing jurisdiction over such matters. In *Williams* the tribal court exercised jurisdiction over disputes over commercial transactions arising on the reservation between members and nonmembers. In *Security State Bank v. Pierre*, 162 Mont. 298, 511 P.2d 325, the tribal court provided for civil litigation between members and nonmembers. In *Fisher*, the most recent United States Supreme Court case so holding, the facts relating to the child custody dispute all arose on the reservation, and the Crow Tribe provided for custody litigation among members (all parties were members of the Crow Tribe). We note that in the situation at hand the Crow Tribal Court only exercises jurisdiction over civil litigation between members and non-members if both parties so stipulate.

However, what is in issue in this case is the enforcement of a valid judgment, not the proper court to initiate the litigation. The transaction did not occur on the reservation as in the above cases but outside the reservation boundaries. The subject matter jurisdiction was within the state court, not the tribal court. The Crow Tribe provides no means of enforcing state court judg-

ments, no method of attaching property of a state judgment debtor, and is not subject to the full faith and credit clause as sister states are. Until the Crow Tribe has provided a means of such enforcement or acted in some manner within this area, we fail to see how tribal self-government is interfered with by assuring that reservation Indians pay for their debts incurred off the reservation.

The crucial fact of this appeal is that the subject matter jurisdiction lies with the state court, not the tribal court. In this case the tribal members elected to leave the reservation and conduct their affairs within the jurisdiction of the state courts. When they do so they are submitting themselves to the laws of this state. They cannot violate those laws and then retreat to the sanctuary of the reservation for protection. The cases analogous to the situation presented here are: *State Securities, Inc. v. Anderson*, 84 N.M. 629, 506 P.2d 786, 789; *Natewa v. Natewa*, 84 N.M. 69, 499 P.2d 691, 693; and *State ex rel. Old Elk v. District Court*, — Mont. —, 552 P.2d 1394, 33 St. Rep. 637 (1976). In all of these cases the state court properly had jurisdiction over the dispute at hand and process was allowed on the reservation to bring the Indian defendant before the state court.

In *Natewa*, the wife, a Zuni Indian living in Wisconsin, brought a URESA action against her ex-husband, a Zuni Indian residing on the Zuni Indian Reservation in New Mexico. The New Mexico Supreme Court upheld the New Mexico District Court's order directing the ex-husband to pay child support, saying:

"* * * Appellant cannot interpose his special status as an Indian as a shield to protect him from obligations that result from his marriage to appellee which had been entered into off the reservation. * * *"

In *State Securities*, a corporation brought suit to recover on notes contracted off the reservation by Navajo Indians. The New Mexico Supreme Court allowed service upon the Indians while they were on the reservation, stating at p. 789:

"State jurisdiction does not eliminate Indian jurisdiction, it exists concurrently with it. There is no interference with Indian self-government. * * *

* * *

* * * Exclusive jurisdiction in Indian courts, which do not necessarily apply state law, may result in shielding Indians from obligations incurred off the reservation."

We have taken a similar position in *Old Elk*, holding that a sheriff of this state may serve a warrant for the arrest of an Indian on the reservation, when the crime has occurred off the reservation.

The respondents elected to be governed by the laws of this state when they left the boundaries of the reservation to obtain the loan from the appellant. This was not a case of a nonmember choosing to transact his business within the boundaries of the Indian reservation as in *Williams*, *Kennerly*, and *Pierre*.

The United States Supreme Court stated in *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L Ed 2d 114, 119:

"* * * Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the state." [Citations omitted.]

Here the respondents did go beyond the boundaries of the Crow Indian reservation and the execution statutes are nondiscriminatory and are otherwise applicable to all citizens of Montana.

This appeal essentially boils down to whether the jurisdiction granted in *Mescalero* is the same as that defined by the United States Supreme Court in *Riggs* and *Pam-to-Pee*, or is it merely the opportunity to render a judgment incapable of enforcement. The latter would be absurd. As the Court said in *Pam-to-Pee*, at p. 226:

"The award of execution is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties * * *."

To avoid such an illogical situation we hold that a writ of execution from a state court is valid within the Indian reservation when such is a means of enforcing a valid judgment of that court.

As we stated in *Old Elk* at 643:

"Individual rights, due process, impartial and effective maintenance of justice and the public confidence in and respect for the courts are paramount in the resolution of these kinds of matters. However, these rights and duties are owed to all citizens not only those residing within the exterior boundaries of an Indian reservation. The citizens of Montana generally and Big Horn County particularly would be grossly deprived if under the guise of *individual* due process they not only had no speedy, adequate remedy, but *no* remedy at all."

As stated earlier, the state court was the only forum available to the appellant. The tribal court lacked subject matter jurisdiction. No federal jurisdiction could be invoked, since there was no federal question, no diversity of citizenship, and the amount in controversy was

10a

less than \$10,000. The state court had the jurisdiction to render its judgment, not even the respondents contest this. Such would not be a judgment without the power to enforce the same. The only available and peaceful means of enforcement to the appellant was the writ of execution from the state court. Without such, the result would be a "catch-us-off-the-reservation" situation, which could possibly lead to breaches of the peace.

In *Old Elk* we held that an Indian may not violate the criminal laws of this state while off the reservation, and then return to the sanctuary of the reservation and throw up his Indian status as a shield against enforcement of those criminal laws. We now hold the same is true for the civil laws of this state.

We are not unmindful of *Annis v. Dewey County Bank*, 335 F.Supp. 133 (1971) cited by respondents. The federal court cited authority from South Dakota and Minnesota in holding that state officials had no jurisdiction on Indian reservations either to serve process on an enrolled member or to enforce a state judgment. The law of this state is directly contrary and in accord with New Mexico, as evidenced by *Old Elk*. We do not agree with the law cited by the federal court in *Annis*, nor do we agree with their rationale.

11a

The decision of the district court is reversed and the injunction dissolved and vacated.

/s/ James T. Harrison
Chief Justice

We concur:

/s/ Wesley Castles

/s/ John Conway Harrison

/s/ Frank I. Haswell
Justices

/s/ Robert Sykes
HON. ROBERT SYKES, District Judge,
sitting in place of Mr.
Justice Gene B. Daly.

APPENDIX B

IN THE DISTRICT COURT OF THE
THIRTEENTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA
IN AND FOR THE COUNTY OF BIG HORN

LITTLE HORN STATE BANK,
Plaintiff,
vs.
ROBERT STOPS AND NORMA STOPS,
Defendants.

Cause No. 8087

ORDER

This matter arises upon an Order to Show Cause and Temporary Restraining Order issued at the instance of the defendants to which the plaintiff has filed its return admitting the factual allegations of defendants' petition, and the issue raised has become submitted to the Court upon the written briefs of the parties, all of which have been duly considered, and

IT IS ORDERED that defendants' petition should be, and hereby is, granted. The plaintiff is permanently enjoined from levying execution on the judgment entered herein upon the property of the defendants and their wages within the Crow Indian Reservation.

Dated this 24th day of March, 1976.

ORIGINAL SIGNED

/s/ Charles Luedke
CHARLES LUEDKE
District Judge

MEMORANDUM

Plaintiff brought action in the above-entitled court upon a promissory note which the defendants signed at plaintiffs' place of business off the Crow Indian Reservation and secured judgment, after a jury trial, in the amount of \$3,541.24. Subsequently, the plaintiff secured a writ of execution and served the same upon the employer of defendant Robert Stops, being the U.S. National Park Service, and also upon the employer of defendant Norina Stops, being the U.S. Public Health Service, seeking to take the wages of the defendants for application upon the judgment. Both defendants are enrolled members of the Crow Tribe and the employment they are engaged in takes place upon the Crow Indian Reservation, Montana.

The issue raised is whether State court process can be utilized to enforce a State court judgment against an Indian by execution upon his property located within the boundaries of the reservation.

It is the position of the plaintiff that this Court has already ruled, acting through another judge, that subject matter jurisdiction and jurisdiction over the defendants exists. Enforcement of the judgment, therefore, is a concomitant of the jurisdiction already obtained by the off-reservation activity of defendants.

The defendants, on the other hand, rely particularly upon *Annis v. Dewey County Bank*, 335 F.Supp. 133 (1971) in which a state court judgment was secured, arising out of an off-reservation transaction, but enforcement on the reservation against defendant's property was enjoined for lack of jurisdiction. In effect that court found that the jurisdiction resulting from an off-reservation setting does not pierce the reservation boundaries for enforcement purposes because it would constitute an infringement upon the right of reservation Indians to make their own laws and be ruled by them, which infringe-

ment is permissible only upon compliance by the state and the Indians with the Acts of Congress by which state jurisdiction is extended onto the reservation. Such compliance had not been accomplished as to the reservation involved in *Annis* and it has not been accomplished as to the Crow Indian Reservation.

I find the principles relied upon in *Annis* to be relevant to this case and persuasive as to the result mandated by the present standing of the law.

Dated this 24th day of March, 1976.

ORIGINAL SIGNED

/s/ Charles Luedke
CHARLES LUEDKE
District Judge

cc: Clarence T. Belue
Cate, Lyнаugh, Fitzgerald & Huss

APPENDIX C

RESOLUTION NO. 64-2

A RESOLUTION OF THE CROW TRIBAL COUNCIL
RELATING TO JURISDICTION OVER MEMBERS OF
THE CROW TRIBE.

WHEREAS, the Supreme Court of the State of Montana has ruled that State Courts have no jurisdiction over an Indian if an Indian commits a crime at any place which was once a part of an Indian Reservation, even though the Federal Government has relinquished its title to the land where the crime was committed, and even though the crime is made an offense by a Federal Statute;

AND WHEREAS, TITLE TO and rights-of-way of lands are still held by the United States in trust for the Crow Tribe and members of the Crow Tribe upon lands which were once a part of the Crow Indian Reservation and the Crow Tribe has never at any time waived the right of the members of said tribe of Indians to jurisdiction over them by relinquishing jurisdiction to the State of Montana;

BE IT RESOLVED, by the Crow Tribal Council that all jurisdiction in both criminal and civil action in any and all actions now pending in any court or hereafter commenced in any court has not at any time been relinquished to any state court, and the Crow Tribal Council hereby expressly retains jurisdiction over any and all criminal and civil action where members of the Crow Tribe are involved, that jurisdiction of all such actions shall at all times be retained in the Tribal and Federal Courts and,

WHEREAS, that the above resolution shall become enforced and in effect immediately.

2c

PASSED, ADOPTED AND APPROVED, this 13th day of July, 1963, by the Crow Tribal Council by — votes for passage and adoption and — votes against. Unanimous X.

/s/ John B. Cummins
Chairman
Crow Tribal Council

ATTEST:

/s/ Arlis Whiteman
Secretary
Crow Tribal Council

I do recommend _____.

I do not recommend _____.

Superintendent
Crow Indian Agency
Crow Agency, Montana